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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

LAVELL HALL,
CDCR #H-05584,

Plaintiff,

vs.

Y.A. GUILA; EDGAR CLARK; TERESA
MECIAS; T. KIRBY; A. TKIEBY;
J. WALKER; FRAZE; ROUCH;
DOES 1- 2,

Defendants.

Civil No. 11cv2661 BEN (WVG)

ORDER:

**(1) DISMISSING COMPLAINT FOR
FAILURE TO STATE A CLAIM
PURSUANT TO 28 U.S.C. § 1915A;
and**

**(2) DENYING MOTION FOR LEAVE
TO FILE SUPPLEMENTAL
COMPLAINT AS MOOT**

I.

PROCEDURAL HISTORY

On November 14, 2011, Lavell Hall, a state inmate currently incarcerated at Corcoran Prison located in Corcoran, California, submitted a civil action pursuant to 42 U.S.C. § 1983. Plaintiff has not sought leave to proceed *in forma pauperis* ("IFP") in this matter but rather Plaintiff has paid the entire \$350 civil filing fee.

II.

SUA SPONTE SCREENING PURSUANT TO 28 U.S.C. § 1915A(b)

The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to review complaints filed by anyone “incarcerated or detained in any facility who is accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP. See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

A. Constitutional Claims

12 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
13 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
14 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
15 United States. See 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), overruled on
16 other grounds by *Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769 F.2d
17 1350, 1354 (9th Cir. 1985) (en banc).

B. Eighth Amendment Inadequate Medical Care Claims

19 Plaintiff's allegations are far from clear but it appears that he is alleging he was denied
20 adequate medical care when he was housed at Centinela State Prison. Where an inmate's claim
21 is one of inadequate medical care, the inmate must allege "acts or omissions sufficiently harmful
22 to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97,
23 106 (1976). Such a claim has two elements: "the seriousness of the prisoner's medical need and
24 the nature of the defendant's response to that need." *McGuckin v. Smith*, 974 F.2d 1050, 1059
25 (9th Cir. 1991), *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136
26 (9th Cir. 1997). A medical need is serious "if the failure to treat the prisoner's condition could
27 result in further significant injury or the 'unnecessary and wanton infliction of pain.'" *McGuckin*,
28 974 F.2d at 1059 (quoting *Estelle*, 429 U.S. at 104). Indications of a serious medical need

1 include “the presence of a medical condition that significantly affects an individual’s daily
 2 activities.” *Id.* at 1059-60. By establishing the existence of a serious medical need, an inmate
 3 satisfies the objective requirement for proving an Eighth Amendment violation. *Farmer v.
 4 Brennan*, 511 U.S. 825, 834 (1994).

5 In general, deliberate indifference may be shown when prison officials deny, delay, or
 6 intentionally interfere with a prescribed course of medical treatment, or it may be shown by the
 7 way in which prison medical officials provide necessary care. *Hutchinson v. United States*, 838
 8 F.2d 390, 393-94 (9th Cir. 1988). Before it can be said that an inmate’s civil rights have been
 9 abridged with regard to medical care, however, “the indifference to his medical needs must be
 10 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
 11 cause of action.” *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (citing
 12 *Estelle*, 429 U.S. at 105-06). See also *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004).

13 While Plaintiff names seven individuals as Defendants, he only refers to three Defendants
 14 in the body of his Complaint, Defendants Aguila, Clark and Kirby. Plaintiff’s allegations, which
 15 are far from clear, appear to arise from his dissatisfaction with how these Defendants responded
 16 to his administrative grievances. Based on the documents attached to his Complaint, it does
 17 appear that Plaintiff received regular physical examinations and medication for his condition.
 18 None of the factual allegations raised in Plaintiff’s Complaint rise to the level of “deliberate
 19 indifference” required to state an Eighth Amendment claim.

20 It also appears that Plaintiff disagreed with the course of treatment provided by
 21 Defendants. A mere difference of opinion between an inmate and prison medical personnel
 22 regarding appropriate medical diagnosis and treatment are not enough to establish a deliberate
 23 indifference claim. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Moreover, there are no
 24 allegations that Plaintiff suffered any physical harm as a result of the actions allegedly taken by
 25 Defendants. See *Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir.
 26 1985) (a prisoner can make “no claim for deliberate medical indifference unless the denial was
 27 harmful.”) Thus, Plaintiff’s Eighth Amendment inadequate medical care claims are dismissed
 28 for failing to state a claim upon which relief can be granted.

1 **C. Fourteenth Amendment Due Process Claims - Grievance Procedures**

2 In addition, to the extent Plaintiff challenges the procedural adequacy of CDCR inmate
 3 grievance procedures, his Complaint fails to state a due process claim. *See* 28 U.S.C.
 4 § 1915A(b)(1); *Resnick*, 213 F.3d at 446. This is because the Ninth Circuit has held that
 5 prisoners have no protected *property* interest in an inmate grievance procedure arising directly
 6 from the Due Process Clause. *See Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (finding
 7 that the due process clause of the Fourteenth Amendment creates “no legitimate claim of
 8 entitlement to a [prison] grievance procedure”); *accord Adams v. Rice*, 40 F.3d 72, 75 (4th Cir.
 9 1994) (1995); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

10 **D. Causation**

11 As stated above, Plaintiff fails to allege any factual allegations against Defendants
 12 Mecias, Walker, Fraze, Rouche or John Does 1 and 2 that would link any of the named
 13 Defendants to an action that related directly to Plaintiff. “A plaintiff must allege facts, not
 14 simply conclusions, that show that an individual was personally involved in the deprivation of
 15 his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). A person deprives
 16 another of a constitutional right under section 1983, where that person ““does an affirmative act,
 17 participates in another’ s affirmative acts, or omits to perform an act which [that person] is
 18 legally required to do that causes the deprivation of which complaint is made.”” *Preschooler II*
 19 *v. Clark County School Bd. of Trustees*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson*
 20 *v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). The “requisite causal connection may be
 21 established” not only by some kind of direct personal participation in the deprivation, but also
 22 by setting in motion “a series of acts by others which the actor knows or reasonably should know
 23 would cause others to inflict the constitutional injury.” *Id.* (citing *Johnson*, 588 F.2d at 743-44).

24 Here, Plaintiff fails to allege facts sufficient to show that any of these named Defendants
 25 were personally involved in the alleged deprivation of his civil rights. Moreover, he appears to
 26 seek to hold some of these Defendants liable in their supervisory capacity. However, there is
 27 no respondeat superior liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d 1433,
 28 1437-38 (9th Cir. 1993). Instead, “[t]he inquiry into causation must be individualized and focus

1 on the duties and responsibilities of each individual defendant whose acts or omissions are
 2 alleged to have caused a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th
 3 Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)).

4 Thus, Plaintiff’s entire Complaint must be dismissed for failing to state a claim upon
 5 which section 1983 relief may be granted. *See* 28 U.S.C. § 1915A(b)(1). Because it is not
 6 altogether certain that Plaintiff would be unable to allege additional facts which might state a
 7 claim against Defendants, however, the Court will provide Plaintiff with an opportunity to
 8 amend his pleading in light of the standards set forth above.

9 III.

10 MOTION TO FILE SUPPLEMENTAL COMPLAINT

11 Plaintiff has also filed a “Motion for Leave to File Supplemental Complaint” [ECF No.
 12 3]. In this Motion, Plaintiff seeks to increase the amount of damages he is seeking against
 13 Defendants. In light of the Court’s dismissal of Plaintiff’s action and the opportunity to file an
 14 Amended Complaint that is complete in itself, Plaintiff’s Motion to File a Supplemental
 15 Complaint is **DENIED** as moot.

16 IV.

17 CONCLUSION AND ORDER

18 Good cause appearing, **IT IS HEREBY ORDERED:**

19 Plaintiff’s Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
 20 § 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave from the date this
 21 Order is “Filed” in which to file a First Amended Complaint which cures all the deficiencies of
 22 pleading noted above. Plaintiff’s Amended Complaint must be complete in itself without
 23 reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants not named and
 24 all claims not re-alleged in the Amended Complaint will be deemed to have been waived. *See*
 25 *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff’s Amended Complaint
 26 fails to state a claim upon which relief may be granted, it may be dismissed without further
 27 leave to amend and may hereafter be counted as a “strike” under 28 U.S.C. § 1915(g). *See*
 28 *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

1 Plaintiff's Motion for Leave to File Supplemental Complaint [ECF No. 3] is **DENIED**
2 as moot.

3 The Clerk of Court is directed to mail Plaintiff a copy of the Court approved form § 1983
4 complaint.

5 **IT IS SO ORDERED.**

6 DATED: 3/09/2012

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HON. ROGER T. BENITEZ
United States District Judge

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